

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the operations, practices, and conduct of Pacific Bell Wireless LLC dba Cingular Wireless, U-3060, U-4135 and U-4314, and related entities (collectively "Cingular") to determine whether Cingular has violated the laws, rules and regulations of this State in its sale of cellular telephone equipment and service and its collection of an Early Termination Fee and other penalties from consumers.

Investigation 02-06-003
(Filed June 6, 2002)

**ADMINISTRATIVE LAW JUDGE'S RULING
GRANTING MOTION TO STRIKE PORTIONS OF THE PREPARED
TESTIMONY OF JODI BEEBE**

By motions concurrently filed on January 15, 2003, Cingular Wireless (Cingular) asks the Commission to strike portions of the prepared testimony of Jodi Beebe (Beebe), a witness for the Utility Consumers' Action Network (UCAN), and asks the Commission to shorten time for the filing of responses to the motion, since the present schedule requires Cingular to distribute its own prepared testimony on January 30, 2003.¹ UCAN filed a timely response.

¹ By e-mail notice on January 16, 2003, I directed that responses, if any, should be filed by January 22, 2003. Because UCAN did not receive timely notice of the motion or of my determination to shorten time, and because the schedule subsequently was revised to move the date for distribution of Cingular's testimony from January 30 to February 6, 2003, at the law and motion hearing on January 24, 2003, I vacated the order shortening time. UCAN filed a timely response.

The motion to strike is related to Cingular's December 9, 2002 motion to compel the names and cellular phone numbers of unidentified customers referred to in Beebe's prepared testimony. Beebe's prepared testimony describes the events that reportedly caused some of these unnamed customers to contact UCAN and lodge informal complaints about Cingular's service; she also includes these contacts in her tallies of the total number of complaints about Cingular made to UCAN. On January 6, 2003, Administrative Law Judge (ALJ) Sarah Thomas heard the motion to compel and determined that principles of fundamental fairness require UCAN to divulge basic customer information to Cingular (i.e., names/cellular phone numbers) if UCAN chooses to include information related to the informal complaints in this proceeding. UCAN has declined to produce the information.

At the law and motion on hearing held in this proceeding on January 24, 2003, I advised the parties that I intended to uphold ALJ Thomas' ruling and would not entertain argument on the underlying motion to compel. UCAN's response to the motion argues that the prepared testimony should be offered in evidence as written and that, thereafter, decisionmakers may decide what weight to give it, based on their view of Beebe's credibility. UCAN also argues that even if the textual discussion relating to these unidentified complainants is stricken, portions of the text that include such complaints within numerical tallies should remain. UCAN's approach would deny Cingular the basic right to know whom its accusers are and would prevent verification that those persons are indeed its own customers. The Commission will not proceed on this basis.

Attachment B to Cingular's motion to strike identifies 50 customer case numbers for which UCAN has not provided the associated customer names and cellular phone numbers. Accordingly, since UCAN has chosen not to divulge

these customers' names and cellular phone numbers, I will grant the motion to strike as described in the ruling paragraphs below.

IT IS RULED that:

1. The January 15, 2003, motion of Cingular Wireless to strike portions of the prepared testimony UCAN's witness Beebe is granted and the following portions of the prepared testimony are stricken: all references in the prepared testimony, or in attachments to the prepared testimony, to the complaints or the complainants represented by any of the 50 UCAN case numbers listed in Attachment B to the motion, including both textual references and any numerical or computational references.

2. UCAN shall revise Beebe's prepared testimony consistent with the directions for making "Corrections to Exhibits" in Appendix A to the August 8, 2002 Scoping Memo and Ruling of Assigned Commissioner (see Appendix A, page 2).

3. UCAN shall serve the revised prepared testimony, by mail and by e-mail, within two weeks of the date of this ruling. If the revised prepared testimony exceeds 75 pages, UCAN may serve a notice of availability (described in Rule 2.3(c) of the Commission's Rules of Practice and Procedure) in lieu of service by mail, on all those who appear on the service list except the assigned ALJ and representatives of CPSD and Cingular.

Dated February 3, 2003, at San Francisco, California.

/s/ JEAN VIETH

Jean Vieth
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Granting Motion to Strike Portions of the Prepared Testimony of Jodi Beebe on all parties of record in this proceeding or their attorneys of record.

Dated February 3, 2003, at San Francisco, California.

/s/ TERESITA C. GALLARDO

Teresita C. Gallardo

N O T I C E

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